



July 9, 2013

Mr. David Lamb  
Director  
Hazardous Waste Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102

**Subject: Detailed Comments on "Working Draft of Proposed Rule Text -- Chapters 3, 4, 5, and 7 "  
dated June 11, 2013**

Dear Mr. Lamb:

At the June 13, 2013 Hazardous Waste Forum staff agreed to provide 30 days for comments on the above-referenced "Working Draft of Proposed Rule Text -- Chapters 3, 4, 5, and 7," a copy of which was found at <http://dnr.mo.gov/env/hwp/forum/docs/130611-propruletext.pdf>.

This document is dated June 11, 2013 and reflects the Department's current view of changes that will be proposed to the Missouri Hazardous Waste regulations, in part, because of 260.373 RSMo, the Hazardous Waste "No Stricter Than" Law.

Enumerated below please find REGFORM's comments on the June 11, 2013 color-coded proposed rule text. The line numbers (*e.g.*, line 127) included in these comments refer to the unique line numbers appearing in the above-referenced Proposed Rule Text.

Thank you for considering these comments. Please do not hesitate to contact me if you have any questions.

1. The definition of ASTM in line 132 is not found on 40 CFR 260.10. Therefore, it should be removed.

2. The definition of abandoned and uncontrolled on lines 133-134 is not found in 40 CFR 260.10. Therefore, it should be removed.
3. The definition of attenuation on lines 138-141 is not found in 40 CFR 260.10. Therefore, it should be removed.
4. The definition of CFR on line 144 is not found in 40 CFR 260.10. Therefore, it should be removed.
5. The definition of CSR on line 145 is not found in 40 CFR 260.10. Therefore, it should be removed.
6. The definition of compliance procedure on lines 148-158 is not found in 40 CFR 260.10. Therefore, it should be removed.
7. The definition of DOT on line 163 is not found in 40 CFR 260.10. Therefore, it should be removed.
8. The definition of extended reporting period on lines 165-168 is not found in 40 CFR 260.10. Therefore, it should be removed.
9. The definition of farmer on lines 170-171 is not found in 40 CFR 260.10. Therefore, it should be removed.
10. The definition of generation on line 175 is not found in 40 CFR 260.10. Therefore, it should be removed.
11. The definition of HSWA on lines 177-178 is not found in 40 CFR 260.10. Therefore, it should be removed.
12. The definition of hazardous constituent on lines 179-181 is not found in 40 CFR 260.10. Therefore, it should be removed.
13. The definition of hazardous waste on lines 182-185 is stricter than that found in 40 CFR 260.10. Therefore, it should be removed.

REGFORM is aware that the Department has announced at Forum meetings that it has retained in this discussion draft the state definition of hazardous waste (and other provisions) because of the “general authority” of the Hazardous Waste Management Commission (given in 260.370 RSMo) to categorize hazardous waste, safely manage hazardous waste, and establish criteria for listing to determine whether or not a waste is hazardous.

260.373(2) RSMo states that limitations on the prohibition against promulgating state rules that are stricter than federal exist only “where state statutes expressly prescribe standards or requirements that are stricter....” The general authority in 260.370 RSMo is not an expressly prescribed standard or requirement.

Because of this prohibition, the only legal definition of a hazardous waste in Missouri that is different from the definition found in 40 CFR 260.10 is the one that is expressly prescribed in

Missouri statute. That definition is found at 260.360(11): “(11) "Hazardous waste", any waste or combination of wastes, as determined by the commission by rules and regulations, which, because of its quantity, concentration, or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a present or potential threat to the health of humans or the environment;”

This statutory definition itself refers to “rules and regulations” promulgated by the Hazardous Waste Commission. Those rules and regulations have been prohibited by law from being stricter than federal RCRA in 260.373 RSMo.

14. The definition of hazardous waste transporter on lines 186-189 is not found in 40 CFR 260.10. Therefore, it should be removed.
15. The definition of household hazardous waste on lines 192-194 should be removed because it makes reference to Missouri regulation paragraph (2)(H)3, which is more stringent than Federal rules. See our comment above about lines 182-185.
16. The definition of identification number on lines 196-197 is not found in 40 CFR 260.10. Therefore, it should be removed.
17. The definition of International Registration Plan, referred to as IRP, on lines 198-200 is not found in 40 CFR 260.10. Therefore, it should be removed.
18. The definition of Missouri hazardous waste mileage on lines 207-210 is not found in 40 CFR 260.10. Therefore, it should be removed. The Department may consider opening up 10 CSR 25-6.263 for the purpose of adding this definition in Chapter 6. Since the major rulemaking that is required by the No Stricter law will not open Chapter 6, this Chapter could be opened and amended at any time.
19. The definition of motor vehicle on lines 211-213 is not found in 40 CFR 260.10. Therefore, it should be removed.
20. The definition of operating disposal facility, on lines 222-224 is not found in 40 CFR 260.10. Therefore, it should be removed. Note: disposal facility is defined in 40 CFR 260.10.
21. The definition of owner/operator, on lines 225-228 is not found in 40 CFR 260.10. Therefore, it should be removed. The Department has correctly proposed that the required substitution of “owner/operator” on lines 80-81 be rescinded. At Forum meetings, the Department has stated that other State statutes (outside of Missouri environmental laws) require that owners and operators be jointly and severally liable. The Department has not provided a citation for that statute. It may be the case that the statute to which they refer has been repealed under subsequent tort reform legislation. Unless a reliable legal basis is provided, this “owner/operator” definition should be removed in this and all cases found in Missouri Hazardous Waste Regulations.

22. The definition of professional engineer, on lines 234-235 is not found in 40 CFR 260.10. Therefore, it should be removed. Although 260.395.7.(2) RSMo refers to “registered professional engineer licensed by the state,” no specific definition is offered.
23. The definition of power unit, on lines 236-237 is not found in 40 CFR 260.10. Therefore, it should be removed.
24. The definition of preceding year on lines 238-239 is not found in 40 CFR 260.10. Therefore, it should be removed.
25. The definition of RCRA on line 242 is not found in 40 CFR 260.10. Therefore, it should be removed.
26. The definition of remedial action on lines 248-254 is not found in 40 CFR 260.10. Therefore, it should be removed.
27. The definition of responsible party on lines 265-269 is not found in 40 CFR 260.10. Therefore, it should be removed.
28. The definition of site on lines 271-272 is not found in 40 CFR 260.10. Therefore, it should be removed.
29. The definition of standby trust fund on lines 273-274 is not found in 40 CFR 260.10. Therefore, it should be removed.
30. The definition of substantial change on lines 275-278 is not found in 40 CFR 260.10. Therefore, it should be removed.
31. The definition of training on lines 280-282 is not found in 40 CFR 260.10. Therefore, it should be removed.
32. The definition of transporter on line 283 is not found in 40 CFR 260.10. Therefore, it should be removed.
33. The definition of universal waste on lines 289-290 is inconsistent with 40 CFR 260.10. Therefore, it should be replaced with the exact language for the definition found in 40 CFR 260.10.
34. The definition of used oil on lines 291-305 is inconsistent 40 CFR 260.10. Therefore, it should be replaced with the exact language for the definition found in 40 CFR 260.10.
35. The definition of USGS on line 306 is not found in 40 CFR 260.10. Therefore, it should be removed.
36. The definition of U.S. importer on lines 307-310 is not found in 40 CFR 260.10. Therefore, it should be removed.
37. The definition of vapor recovery system on lines 312-315 is not found in 40 CFR 260.10. Therefore, it should be removed.

38. The definition of vehicle on lines 316-317 is not found in 40 CFR 260.10. Therefore, it should be removed.
39. The definition of waste on lines 320-323 is not found in 40 CFR 260.10. Therefore, it should be removed.
40. The record-keeping requirements on line 388-390 are stricter than 40 CFR 261.4. Therefore, this should be removed.
41. The added restrictions on used oil found on lines 411-417 are stricter than 40 CFR 261.4. Therefore, these should be removed. It appears that the Department is relying on the general authority given to the Commission in 260.370 RSMo to impose used oil regulations that are stricter than federal RCRA. 260.373(2) RSMo states that limitations on the prohibition against promulgating state rules that are stricter than federal exist only “where state statutes expressly prescribe standards or requirements that are stricter....” 260.370 RSMo does not set forth expressly prescribed standards or requirements for used oil.
42. The use of the term “owner/operator” on line 418 is stricter than federal RCRA. See our comment above regarding lines 225-228.
43. The prohibitions regarding cathode ray tubes on lines 422-423 expressly rely on general authority found in 260.432.5 RSMo. 260.370 RSMo states that limitations on the prohibition against promulgating state rules that are stricter than federal exist only “where state statutes expressly prescribe standards or requirements that are stricter....” 260.432.5 RSMo does not set forth expressly prescribed standards or requirements for cathode ray tubes. Therefore, this prohibition should be removed.
44. The Missouri modifications to F listed trichlorophenol language in 40 CFR 261.31 on lines 429-437 is stricter than federal and should be removed. As mentioned previously, 260.373(2) RSMo does not allow the Department to rely on general authority in 260.370 RSMo. Specific listing requirements for these trichlorophenols cannot be found in Missouri Hazardous Waste Management Law.
45. The creation of waste code MH01 on lines 438-442 is stricter than federal and should be removed. As mentioned previously, 260.373(2) RSMo does not allow the Department to rely on general authority in 260.370 RSMo. Specific listing requirements for these residues from the cleanup of a spill cannot be found in Missouri Hazardous Waste Management Law.
46. The creation of waste code MH02 and additional requirements for 2,3,7,8-TCDD on lines 443-450 are stricter than federal and should be removed. As mentioned previously, 260.373(2) RSMo does not allow the Department to rely on general authority in 260.370 RSMo. Specific listing requirements for 2,3,7,8-TCDD cannot be found in Missouri Hazardous Waste Management Law.
47. The use of the term “owner/operator” on line 488 is stricter than federal RCRA. It should be replaced. See our comment above regarding lines 225-228.

48. Additional manifesting requirements imposed by language in lines 537-544 are not exempted by 260.373(2) RSMo. Therefore, they should be removed.
49. Manifesting and reporting requirements for 2,3,7,8-TCDD found in lines 545-548 cannot be imposed based on general authority found in 260.370 RSMo. See our comment about lines 443-450 above. These lines should be removed.
50. Manifesting and reporting requirements for used oil found in lines 549-550 cannot be imposed based on general authority found in 260.370 RSMo. See our comment about lines 411-417 above. These lines should be removed.
51. The requirements to record total weight or specific gravity on lines 551-552 are not found in 40 CFR 262 and therefore should be removed.
52. The manifesting requirements on lines 553-557 are not found in 40 CFR 262 and therefore should be removed.
53. The following sentences on lines 661-664 are stricter than 40 CFR 262 and therefore should be removed. "The period of record retention referred to in 40 CFR 262.40(d) begins the day the initial transporter signs the manifest. The period of record retention referred to extends upon the written requests of the department or automatically during the course of any unresolved enforcement action regarding the regulated activity." The specific exemption associated with registration requirements from No Stricter Than provisions in 260.373.2(b) RSMo does not apply to record retention.
54. The sentence beginning with "Owner/operator" on line 790 is stricter than Federal RCRA and should be removed. See our comment above regarding lines 225-228.
55. The use of the term "owner/operator" on line 793 is stricter than federal RCRA. See our comment above regarding lines 225-228.
56. This sentence on lines 794-795 is vague: "In the case of contradictory or conflicting requirements, the more stringent shall control." It should be amended to make clear that it refers only to conflicts or contradictions within 40 CSR 25-7.264. A conflict between a state and a federal rule, according to 260.373 RSMo would result in nullification of the state rule, if it is stricter than federal RCRA regulations. Whether or not rule language that is stricter than federal RCRA regulations is adopted and published in Missouri CSR, it becomes null and void to the extent that it is inconsistent on December 31, 2015.
57. The use of the term "owner/operator" on line 806 is stricter than federal RCRA. It should be replaced with "owner or operator". See our comment above regarding lines 225-228.
58. The additional manifesting requirements set forth on lines 841-842 are stricter than 40 CFR 264 and therefore should be removed. Manifesting requirements are not exempted from No Stricter Than provisions in 260.373.2 RSMo.
59. The use of the term "owner/operator" on line 859 is stricter than federal RCRA. It should be replaced with "owner or operator". See our comment above regarding lines 225-228.

60. The use of the term “owner/operator” on line 861 is stricter than federal RCRA. It should be replaced with “owner or operator”. See our comment above regarding lines 225-228.
61. The use of the term “owner/operator” on line 871 is stricter than federal RCRA. It should be replaced with “owner or operator”. See our comment above regarding lines 225-228.
62. The use of the term “owner/operator” on line 885 is stricter than federal RCRA. It should be replaced with “owner or operator”. See our comment above regarding lines 225-228.
63. The use of the term “owner/operator” on line 889 is stricter than federal RCRA. It should be replaced with “owner or operator”. See our comment above regarding lines 225-228.
64. The use of the term “owner/operator” on line 894 is stricter than federal RCRA. It should be replaced with “owner or operator”. See our comment above regarding lines 225-228.
65. All of the requirements related to railcars on lines 1556-1626 are stricter than federal RCRA. These should be removed.
66. The use of the term “owner/operator” on lines 1638, 1646, 1649, 1655, and 1657 is stricter than federal RCRA. In each case this phrase should be replaced with “owner or operator”. See our comment above regarding lines 225-228.
67. The use of the term “owner/operator” on lines 1682, 1692, 1701, 1705, and 1710 is stricter than federal RCRA. In each case this phrase should be replaced with “owner or operator”. See our comment above regarding lines 225-228.
68. All of the requirements related to railcars on lines 1909-1912 are stricter than federal hazardous waste regulations and therefore should be removed. Railcars are simply another type of container. Since 260.373 RSMo does not afford the Department special authority to regulate railcar containers differently than Federal rules, other than an option to impose specific labeling requirements, the proposed regulations on these lines should be deleted.
69. The use of the term “owner/operator” on line 2002 is stricter than federal RCRA. This phrase should be replaced with “owner or operator”. See our comment above regarding lines 225-228.
70. The prohibitions against land disposal on lines 2026-2027 rely on 10 CSR 25-4.261(2)(D)1.A. –C., which is stricter than 40 CFR 268. These should be removed. Please see our comment above regarding lines 429-437. As mentioned previously, 260.373(2) RSMo does not allow the Department to rely on general authority in 260.370 RSMo. Specific listing requirements for these trichlorophenols cannot be found in Missouri Hazardous Waste Management Law.
71. The prohibitions against land disposal on lines 2026-2027 and 2037-2039 rely on 10 CSR 25-4.261(2)(D)1.A. –C., which is stricter than 40 CFR 268. These should be removed. Please see our comment above regarding lines 429-437. As mentioned previously, 260.373(2) RSMo does not allow the Department to rely on general authority in 260.370 RSMo. Specific listing requirements for these trichlorophenols cannot be found in Missouri Hazardous Waste Management Law.

72. The prohibitions against land disposal on lines 2028-2029 and 2040-2042 rely on 10 CSR 25-4.261(2)(D)2, which is stricter than 40 CFR 268. These should be removed. Please see our comment above regarding lines 438-442. As mentioned previously, 260.373(2) RSMo does not allow the Department to rely on general authority in 260.370 RSMo. Specific listing requirements for these residues from the cleanup of a spill cannot be found in Missouri Hazardous Waste Management Law.
73. The added restriction on land disposal on lines 2030-2034 relies on 10 CSR 25-4.261(2)(D)3, which is stricter than 40 CFR 268. These should be removed. Please see our comment above regarding lines 443-450. As mentioned previously, 260.373(2) RSMo does not allow the Department to rely on general authority in 260.370 RSMo. Specific listing requirements for 2,3,7,8-TCDD cannot be found in Missouri Hazardous Waste Management Law.
74. The use of the term “owner/operator” on lines 2069, 2071, 2080, and 2093 is stricter than federal RCRA. In each case this phrase should be replaced with “owner or operator”. See our comment above regarding lines 225-228.
75. The permitting requirement on lines 2076-2095 are stricter than 40 CFR 270 and therefore should be removed. The identification that these lines of regulations are more stringent than Federal is self-evident upon reading line 2076 which states “This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 270 subpart A.” As HB 1251 does not confer the Department authority to impose more stringent rules than subpart A of the cited Federal rule, the cited lines should be deleted.
76. The sentence beginning with “The Owner/operator” on line 2078 is stricter than Federal RCRA and should be removed. See our comment above regarding lines 225-228.
77. The use of the term “owner/operator” on line 2101 is stricter than federal RCRA. This phrase should be replaced with “owner or operator”. See our comment above regarding lines 225-228.
78. The health profile requirement in lines 2207-2208 should be colored purple, indicating that it will be rescinded if HB 28 or HB 650 is signed into law.
79. All of the requirements related to railcars on lines 2215-2217 are stricter than federal hazardous waste regulations and therefore should be removed.
80. The use of the term “owner/operator” on lines 2268, 2294, 2308, and 2313 is stricter than federal RCRA. In each case this phrase should be replaced with “owner or operator”. See our comment above regarding lines 225-228.

Finally, REGFORM’s comments to the Department dated June 3, 2013 remain in effect. We reiterate here our assertion that explanatory or helpful passages in Missouri regulations that do not add obligations to existing federal RCRA regulations, are stricter than federal because they add a burden to Missouri generators to track two sets of regulations. In general, where Missouri and federal regulations differ, the Missouri regulation should be rescinded (bearing in mind the exceptions provided in 260.373 RSMo).



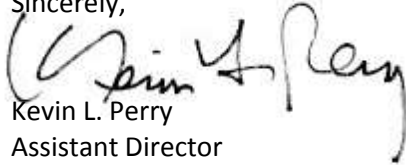
June 26, 2013

Page 9

Thank you for considering our comments and requests.

We look forward to reviewing the next version of the rule and continuing to work with the Department on this important rule amendment process to implement 260.373 RSMo. Do not hesitate to contact me at (573) 761-9313, or via email at [kperry@regform.org](mailto:kperry@regform.org), should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin L. Perry". The signature is fluid and cursive, with the first name "Kevin" and last name "Perry" being the most legible parts. The middle initial "L." is written in a smaller, less distinct script.

Kevin L. Perry  
Assistant Director

c:     A. Schmidt, DEQ  
       L. Tippet Mosby, DEQ  
       R. Walker, REGFORM  
       REGFORM Members